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COHEN MILSTEIN

March 29, 2021

MEMO ENDORSED

VIA ECF

The Honorable Katherine Polk Failla
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Iowa Pub. Emps. ' Ret. Sys. et al. v. Bank of Am. Corp. et al.*, No. 17-cv-6221 (KPF)

Dear Judge Failla:

Section 9 of the Protective Order (Dkt. Nos. 150, 228) provides that for any filing that quotes or refers to discovery material that has been designated Confidential, Highly Confidential, or Highly Confidential Data, the party “shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal.” Consistent with the process this Court approved for such requests (Dkt. No. 408), the Parties now move for sealing or redaction of certain materials filed with Plaintiffs’ Class Certification Motion. The Parties’ justifications for sealing or redacting those materials under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), and its progeny are as follows.

Plaintiffs’ Justifications and Designations

Plaintiffs’ motion papers quote from, discuss, and refer to discovery material produced by certain Parties subject to confidentiality designations, which include trade secrets, other confidential research, development, or commercial information, or other private or competitively sensitive information, including personal data. Accordingly, Plaintiffs request that the marked portions of Plaintiffs’ memorandum of law, of Exhibits 9 and 10 to the Declaration of Daniel L. Brockett dated February 22, 2021, and Mr. Brockett’s Declaration itself, be filed in redacted form. We also ask that Exhibits 11-14 to Mr. Brockett’s Declaration be filed under seal.

Plaintiffs’ memorandum and certain supporting materials also quote from, discuss, and refer to the substance of discovery material produced by Third-Parties subject to confidentiality designations, which likewise include trade secrets, other confidential research, development, or commercial information, or other private or competitively sensitive information, including personal data. Plaintiffs have proposed, and Defendants have had the opportunity to review, filing under seal or with redactions consistent with the designations made by Third-Parties and *Lugosch*, except where such Third-Parties have provided their consent for such materials to be filed publicly. Accordingly, Plaintiffs request on their behalf that marked portions of Plaintiffs’ memorandum and Exhibits 9 and 10 to the February 22, 2021 Declaration of Daniel L. Brockett

be filed in redacted form. We also request that Exhibits 2, 57, 59-61, 64, 81-82, 94-95, 100, 104-108, 111-112, and 124 to the Brockett Declaration be filed entirely under seal.

Plaintiffs take no position with respect to Defendants' redaction and under-seal requests beyond those which we request ourselves, and reserve all rights under the Protective Orders.

Defendants' Justifications and Designations

Plaintiffs' memorandum and certain supporting materials quote from, discuss, and make reference to the substance of documents and data designated "Confidential" and "Highly Confidential" under the Parties' January 2, 2019 Protective Order (Dkt. No. 150), and "Highly Confidential Data" under the Parties' October 30, 2019 Supplemental Protective Order (Dkt. No. 228). Such materials include trade secrets, other confidential research, development, or commercial information, and other private or competitively sensitive information, including personal data. Accordingly, as provided in the Court's January 19, 2021 Order (Dkt. No. 408), Defendants provided Plaintiffs with proposed redactions to Plaintiffs' memorandum and certain supporting material, and Plaintiffs have had the opportunity to review the proposed redactions. Defendants request that Plaintiffs' memorandum and Exhibits 9, 10, 15-16, 32, 44, and 78 to the Declaration of Daniel L. Brockett in Support of Plaintiffs' Motion for Class Certification and Appointment of Quinn Emanuel & Sullivan, LLP as Co-Lead Class Counsel ("the Brockett Declaration"), as well as the Brockett Declaration itself, be filed in redacted form. We also request that Exhibits 3-8, 17-31, 33-43, 45-56, 58, 62, 65-77, 79-80, 83-93, 96-97, 101-103, 109-110, 113-123, 126-134, and 150-151 to the Brockett Declaration be filed entirely under seal. This is in accordance with Section 9 of the Protective Order, which provides that for "papers containing or making reference to the substance of ["Confidential", "Highly Confidential", or "Highly Confidential Data"] material or information, [a Party] shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal."

Respectfully submitted,

/s/ Michael B. Eisenkraft

Michael B. Eisenkraft
COHEN MILSTEIN SELLERS & TOLL
PLLC

/s/ Daniel L. Brockett

Daniel L. Brockett
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Application GRANTED. The portions of Plaintiffs' submissions specified above may be filed under seal, viewable only to the parties and the Court.

Dated: March 29, 2021
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE